

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DALE R. ASHER,)
Petitioner,)
vs.)
DAVID DORMIRE,)
Respondent.)
Case number 4:04cv0206 TCM

MEMORANDUM AND ORDER

This 28 U.S.C. § 2254 petition is before the Court¹ on two motions of petitioner, Dale R. Asher, requesting a transcript of a mistrial on April 21, 1993; a transcript of "the violation" on November 19, 1997; and a transcript of a hearing on March 17, 1998.²

Petitioner seeks habeas relief from a fifteen-year sentence imposed on his guilty plea to one count of sodomy. (Pet. at 2.) He lists the date of that conviction as April 27, 2001. (Id.) This is the day on which he was allegedly sentenced after his probation had expired on the original sentence imposed in May 1994. (Id. at 5.) The original sentence was a fifteen-year term of imprisonment, the execution of which was suspended pending Petitioner's completion of a five-year term of probation. (Id. at 8-9.) Petitioner alleges in his one ground for relief that the 2001 sentencing court was without jurisdiction to impose the fifteen-year term. (Id. at 11.)

¹The case is before the undersigned United States Magistrate Judge by written consent of the parties. See 28 U.S.C. § 636(c).

²In his petition, Petitioner lists this date as March 16.

Respondent counters that the petition is untimely because it was filed well after the one-year statute of limitations of 28 U.S.C. § 2244(d) had expired. In making this argument, Respondent employs the original sentencing day of May 13, 1994, as the relevant date.

Respondent misapprehends Petitioner's argument. He is contending that his 2001 sentence is unconstitutional because the court imposing it lacked jurisdiction. Respondent will be directed to show cause why relief should not be granted on that ground.

On the record now before the Court, the only relevant transcripts appear to be of the May 1994 proceeding and the April 2001 proceedings. Respondent is directed to file these transcripts with his response. Petitioner's motions for other transcripts will be denied.

Accordingly,

IT IS HEREBY ORDERED that Respondent shall show cause, in writing and within forty-five days of the date of this Order, why the relief requested in the instant petition should be granted and shall file the two above-described transcripts.

IT IS FURTHER ORDERED that the two motions of Petitioner for transcripts and non-transcribed proceedings to be transcribed are each **DENIED**. [Docs. 10, 11]

/s/ Thomas C. Mumment, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 7th day of October, 2005.